

## **BOARD OF ZONING APPEALS**

**Minutes  
May 27, 2003**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on May 27, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, ERMA MARKHAM, BICKLY FOSTER, RANDY PHILLIPS,  
JOHN ROGERS.

The following Board members were absent:

JAMES SKELTON

SHARON DICKGRAFE -- Law Department present.

HERB SHANER -- Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary.

LISA ESTRADA, Recording Secretary.

**RUANE:** Item #1, April 22, 2003 BZA meeting minutes.

**FOSTER moves, MARKHAM seconds to approve April 22, 2003 BZA meeting minutes.**

**Motion Carries 5-0.**

**RUANE:** Item #2 BZA2003-13 variance request to permit parking within 5 feet of property line for property zoned "MF-29" Multi-Family Residential. Applicant is USD 259, agent Joe Hoover, location on the west side of Emporia and south of Lincoln.

**KNEBEL, Planning staff:** Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

### **SECRETARY'S REPORT**

**CASE NUMBER:** BZA2003-00013

**OWNER/APPLICANT:** USD 259 c/o Joe Hoover

**REQUEST:** Variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front and street side setbacks on residentially-zoned property

**CURRENT ZONING:** "MF-29" Multi-Family & "B" Multi-Family

**SITE SIZE:** 3.06 Acres

**LOCATION:** Southwest corner of Lincoln & Emporia (1210 S. Topeka)

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant is requesting a variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front and street side setbacks on residentially-zoned property. The

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subject property is located on the southwest corner of Lincoln & Emporia at 1210 S. Topeka. The subject property is zoned "MF-29" Multi-Family & "B" Multi-Family and is developed with Lincoln Elementary School and the Healthy Children's Center medical clinic.

The applicant proposes to construct an addition to Lincoln Elementary School as illustrated on the attached site plan. Since the value of the proposed addition exceeds 50 percent of the appraised value of the existing school, Section VII-E of the Unified Zoning Code requires that all existing non-conformities on the subject property be brought into conformance with the Unified Zoning Code unless a Variance is granted by the Board of Zoning Appeals.

The existing parking lot on the subject property is non-conforming because it is located within the front and street side setbacks, which is prohibited on residentially-zoned property by Section IV-A.6.a. of the Unified Zoning Code. As stated in the attached letter, the applicant has requested a Variance to allow the existing non-conforming parking lot to remain within the front and street side setbacks because the subject property is very small for a school site and the only available location for constructing a parking lot in conformance with the Unified Zoning Code would entail eliminating the playground area.

#### **ADJACENT ZONING AND LAND USE:**

NORTH	"B"	Single family, duplex, triplex, church
SOUTH	"MF-29"	Single family, duplex
EAST	"MF-29"	Single family, duplex, fourplex
WEST	"MF-29"	Single family, duplex

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the subject property has been developed as a school since 1885, well before automobiles were invented and the need for parking lots was established. In Wichita, continuous use of a property for a school for such an extended period of time has occurred on fewer than a dozen properties, and none of these properties has been able to completely conform with present-day zoning regulations without expanding the land area available to the school by acquiring adjoining parcels.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating the playground on the school property.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the parking lot has existed in its present configuration for over 25 years with no detrimental impacts to public health, safety, or welfare.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch as the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous

landscaped street yard. The subject property is located along an arterial street at the edge of the residential neighborhood; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

**RECOMMENDATION:** It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The parking lot shall be permitted to encroach into to the front setback along Emporia but shall not be located closer than six (6) feet from the east property line.
2. The parking lot shall be permitted to encroach into to the street side setback along Lincoln but shall not be located closer than 13 feet from the north property line.
3. The parking lot shall be paved and marked in general conformance with the approved site plan.
4. The parking lot shall be developed in general conformance with the landscape ordinance.
5. The applicant shall obtain all necessary permits, and the improvements to the parking lot shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
6. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**RUANE:** Any questions for Scott?

**FOSTER:** When you mentioned this, maybe it's in here, it's 5 feet from where?

**KNEBEL:** On this particular property, the 5 feet that was advertised is actually 6 feet shown on the site plan, the setback is from the right-of-way line to the property line on Emporia.

**FOSTER:** This is a reduction from what?

**KNEBEL:** From the residential front yard setback along Emporia, which is in the MF-29 district which leaves 20 or 25 feet, I don't recall.

**FOSTER:** That's not in here.

**KNEBEL:** No, it doesn't mention what the reduction is from.

**FOSTER:** So, it's 5 feet out of 20 feet, possibly.

**KNEBEL:** That's correct. The parking area, the way the code reads, is not allowed to be in the front setback, and I think actually it's 25 feet for the front for MF-29.

**MARKHAM:** Scott, is this parking for people that are attending or working at the school or parents coming in and out picking up their students?

**KNEBEL:** It's primarily for teacher parking. The parking requirement is based on the number of employees plus 5 guest parking spaces. Most of the student pick up and drop off is actually occurring on the street. I was actually there when school started and took these pictures.

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**MARKHAM:** Have they had any problem with safety of students being dropped off?

**KNEBEL:** Not that I'm aware of. There is not really any significant change involved with this particular project to pick up and drop off of students. It's really an improvement in terms of the type of facility. Very little change is proposed to the existing parking area.

**DICKGRAFE:** Scott the front setback would be 25 feet.

**KNEBEL:** The front is 25 and the side is 20, is that right?

**DICKGRAFE:** Yes.

**RUANE:** Any other questions? Now we will hear from the applicant.

**JOE HOOVER, applicant, USD 259:** As far as the school safety, of course we are always real concerned about drop off and trying to make sure kids aren't walking across the street. This won't really address any of that. We have the same amount parking if we obtain this variance.

**MARKHAM:** Do you think this will cause any later problems for safety?

**HOOVER:** I don't believe it will add safety concern. It won't change traffic patterns. Were just trying to legally park.

**FOSTER:** May we assume you were able the answer questions of the people that were here before when this was deferred.

**HOOVER:** Yes, one was the property owner on the west side. They wanted to know if that Lincoln Clinic was going away since we were doing construction on that side, and it's not. Their question was not related with our variance request.

**FOSTER:** When we finish with this case, I would like to ask you a question on another matter, on towers. Can you stay, please?

**HOOVER:** Yes.

**RUANE:** Is there anyone else who cares to be heard on this matter? All right, let's bring it up here for discussion or a motion.

**PHILLIPS:** I'm ready to make a motion.

**FOSTER:** Mr. Chairman, whatever motion is made, I would like to see that it does make reference to what their reduction setback is.

**KNEBEL:** If I may clarify that, the Board is not being asked to reduce the setback at all. The Board is being asked to allow a parking area to be located within the setback area. The actual building setback for structures will still remain in place on the property.

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**PHILLIPS:** I'm prepared to make a motion, and I agree with Mr. Foster that the resolution needs to mention the setback distances for future reference.

**PHILLIPS MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00013.**

**Motion carries 5-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2003-00013**

**WHEREAS**, USD 259 c/o Joe Hoover, (owner/applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front and street side setback on property zoned "MF-29" Multi-family Residential "B" Multi-family Residential and legally described as follows:

RESERVE FROM LINCOLN ST S TO ALLEY & FROM TOPEKA TO EMPORIA AVE. & N1/2 VAC ALLEY ADJ ON S ZIMMERLY'S 2ND. ADD. EXEMPT 6076-0. LOTS 18-20-22 & S1/2 VAC ALLEY ADJ LOT 18 ON N & W1/2 VAC ALLEY ADJ SAID LOTS ON E TOPEKA. LOTS 24-26 & W1/2 VAC ALLEY ADJ ON E TOPEKA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 6076-0. LOTS 28-30 & W1/2 VAC ALLEY ADJ ON E TOPEKA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 1015-1. LOTS 32-34 EXC S 20 FT LOT 34 DED FOR ALLEY & W1/2 VAC ALLEY ADJ LOT 32 & N 5 FT LOT 34 ON E TOPEKA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 2816-81-TX. LOT 17-19-21 & S1/2 VAC ALLEY ADJ LOT 17 ON N & E1/2 ON N & E1/2 VAC ALLEY ADJ SAID LOTS ON W EMPORIA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 6076-0. LOTS 23-25 & E1/2 VAC ALLEY ADJ ON W EMPORIA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 2816-81-TX. LOTS 27-29 & E1/2 VAC ALLEY ADJ ON W EMPORIA AVE. ZIMMERLY'S 2ND. ADD. EXEMPT 2816-81-T. LOTS 31-33 & E1/2 VAC ALLEY ADJ LOT 31 & N 5 FT LOT 33 ON W EMPORIA AVE. ZIMMERLY'S 2ND. ADD. Generally located at the southwest corner of Lincoln and Emporia (1210 S. Topeka).

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of May 27, 2003, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch

as the subject property has been developed as a school since 1885, well before automobiles were invented and the need for parking lots was established. In Wichita, continuous use of a property for a school for such an extended period of time has occurred on fewer than a dozen properties, and none of these properties has been able to completely conform with present-day zoning regulations without expanding the land area available to the school by acquiring adjoining parcels.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating the playground on the school property.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the parking lot has existed in its present configuration for over 25 years with no detrimental impacts to public health, safety, or welfare.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located along an arterial street at the edge of the residential neighborhood; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front and street side setbacks on property zoned "MF-29" Multi-family Residential and "B" Multi-family Residential and legally described as follows:

RESERVE FROM LINCOLN ST S TO ALLEY & FROM TOPEKA TO EMPORIA AVE. &  
N1/2 VAC ALLEY ADJ ON S ZIMMERLY'S 2ND. ADD. EXEMPT 6076-0. LOTS 18-20-

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**The variance is hereby GRANTED, subject to the following conditions:**

1. The parking lot shall be permitted to encroach into the 25-foot front setback along Emporia but shall not be located closer than six (6) feet from the east property line.
2. The parking lot shall be permitted to encroach into the 20-foot street side setback along Lincoln but shall not be located closer than 13 feet from the north property line.
3. The parking lot shall be paved and marked in general conformance with the approved site plan.
4. The parking lot shall be developed in general conformance with the landscape ordinance.
5. The applicant shall obtain all necessary permits, and the improvements to the parking lot shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
6. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 27th DAY of MAY, 2003.**

**RUANE:** Before we go to the report from Central Inspection, Mr. Foster, would you like to ask question of Mr. Hoover?

**FOSTER:** Mr. Hoover as I recall were you the one who brought in the 47 towers or was that someone else?

**HOOVER:** That is from the office where I'm from.

**FOSTER:** Were you there?

**HOOVER:** I wasn't directly involved. Julie Hedrick and Mike Brown worked on that.

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**FOSTER:** I keep running into the question whether the school board has ever allowed an extra provider on their towers or not. Was that was one of the conditions placed on that, do you know anything about that?

**HOOVER:** I am not sure, but I can find out for you.

**PHILLIPS:** I recall the discussions. I remember that was one of things we made reference to when those towers were approved. I've been told by a couple of other people that were trying to build cell towers that the school towers structurally are not able to accommodate additional devices. I think that's what your trying to verify.

**FOSTER:** I go to meetings where I'm faced with that issue, and I'd like to know if this Board required the school towers to be capable of handling additional devices as a condition of approval.

**DICKGRAFE:** I think what was represented to us at that time is it was the school board's policy not to have additional devices on their towers. I'm not too sure that we didn't say they couldn't have them on there because we didn't want to turn these into commercial sites. Now that was certainly before the master cell phone or cell tower plan. I do know there was a lot of discussion at least for the last half for the ones that were approved as to whether or not other vendors could put their equipment on the towers.

**PHILLIPS:** In some of our discussion, some of the feedback we got, a number of towers were able to handle additional devices. I do recall that, but I got rid of most of my reports. I would be interested in hearing some of the feedback on that and reviewing some of previous records.

**FOSTER:** I think it would be worth it. Some of those towers are 100 feet high.

**PHILLIPS:** Some are 150 feet high, actually.

**FOSTER:** North High got 150 feet. The only reason I it bring up is when I go to a meeting on towers I get different reports why it's not being done and so forth; it makes it a little hard to understand while these school towers aren't used more often.

**DICKGRAFE:** The only thing we could do is go back look at minutes and/or look at the conditions that were on those. I think that process involved additional conditions were put on the approvals.

**PHILLIPS:** They were not able to accommodate additional devices. It was very difficult to put more on there. It would be nice to hear something on that.

**RUANE:** I'm deciding that this would be on June agenda.

**KNEBEL:** We would have to schedule a meeting just for that.

**PHILLIPS:** I think you can schedule it for the next meeting. I do think it is something that is going to continue to surface. It would be nice to deal with it at least. I get different answers. It would be nicer if this were just put to rest.

**DICKGRAFE:** Can we have Scott or JR or Herb, whoever is here from Central Inspection do history report as to the variance requests?



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**RUANE:** I would like to have Mike Brown or Julie Hedrick here, and have them submit something in anticipation of the meeting to explain the policy of the school district.

**DICKGRAFE:** I think you might want to be careful, because there's not actually an item to be heard by the Board. If you want to go back and look at our records and ask for their input you can, but I'm a little leery of the Board creating an agenda item and compelling folks to appear on item before the Board.

**RUANE:** The reason why I'm not leery is because, as we all know, this Board voted against the construction of a 130-foot tower on Kellogg east of Woodlawn.

**DICKGRAFE:** The school board wasn't apart of that.

**RUANE:** I do think that during my last tenure here, I want to find out how it is that these things happen, and how this relates to overall cell phone/tower plan. Quite early on, I believe before the hearings on the school board towers, the CPO, now referred to as DAB, was asked to consider the location of cell tower at Dellrose and Central. Because of that extensive background work was done, and a plan to co-locate cell phone providers, relay systems or other tower needs together with a tower that was going to be constructed at Robinson Middle School that ultimately was not agreed to by the school district. Since that time, much has changed and I think we need an update. I'm particularly interested in knowing if there is way that the school district can use these towers as way to generate additional revenue and at the same time the result would be to prevent other towers from being constructed in neighborhoods.

**PHILLIPS:** I do think that we will be called upon to hear some additional cases regarding towers.

**MARKHAM:** Could we ask the secretary to copy the minutes of the requests for our meeting.

**DICKGRAFE:** It would be about a year worth of minutes.

**PHILLIPS:** We heard 22 individual cases, but almost all of them were identical. The real difference was the height of the towers. I suggest you copy some of the earlier ones where most of the discussion occurred regarding the need for the towers and so forth. I suggest copying the minutes for a 100-foot tower and for a 150-foot tower.

**RUANE:** I would like to see USD 259 and staff could work together to put together a report that addresses some of the issues regarding whether or not the towers were required to allow additional devices and what the school district's policy is regarding allowing these additional devices. I would like it to be on agenda at the meeting after the fact gathering is complete.

**FOSTER:** Mr. Hoover, I don't mean to pick on you about this, but you can see from this discussion how we get a lot of questions that keep coming back. I suspect this affects the staff. I don't envy Scott having to write up these reports, I'm on DAB 6, for example, and we hear requests for several towers. I thought that it would help the city to reduce the number of towers if we had good answers to these questions.

**HOOVER:** I was involved in the one at Robinson. There were several things they didn't want there. They wanted the tower taller. They wanted a 30' x 25' spot, but everybody wanted them to have only 5' x

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15' sport. Parking and expansion were big concerns there. I will talk with Julie when I get back to the office and we will get Scott the information you are requesting.

**RUANE:** And Joe, I think what you explained about the Robinson site is exactly correct. I thank you for that. Sharon, could we do this in executive session.

**DICKGRAFE:** I think it would be cleaner to just put it on agenda item as workshop item, call the workshop item, have information from staff and from USD 259, if they want to. My concern was it appeared that you were directing USED 259 to show up, and I'm not sure you can do that. I think staff could work with USD 259, and I don't think that would be a problem. This Board certainly has the authority to summons witnesses, but absent a specific case, I think a workshop on cell towers makes more sense.

**RUANE:** Thank you Joe. Do we have a report from Central Inspection?

**SHANER:** Nothing to report at this time.

**Meeting adjourns at 2:10 pm.**